

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

BANXCORP,

Plaintiff,

v.

BANKRATE, INC.,

Defendant.

Civil Action No. 07-3398 (SDW)(MCA)

**DECLARATION OF
NORBERT MEHL**

I, Norbert Mehl, of full age, being duly sworn, declare as follows:

1. I am the founder, chairman, president and chief executive officer of BanxCorp and I submit this declaration to attest to BanxCorp's document retention policies and procedures ("BanxCorp's DRP") pursuant to the Order of Magistrate Judge Madeline C. Arleo dated April 4, 2011.

2. BanxCorp's DRP is modeled after broadly recognized record-retention policies and procedures for small businesses recommended by leading consulting firms such as H&R Block and RSM McGladrey¹, as shown in the attached Exhibit A.

3. BanxCorp's DRP enforcement practices further meet or exceed certain guidelines set forth by the Small Business Guide to Document Retention published by the NFIB² Legal Foundation produced with the assistance of attorneys Arent Fox PLLC in Washington DC, as shown in the attached Exhibit B.

4. BanxCorp's DRP is fully compliant with Internal Revenue Service record-keeping requirements and federal and state business record retention requirements.

¹ H&R Block is one of the world's largest tax services providers. RSM McGladrey ranks as the fifth largest U.S. provider of assurance, tax and consulting services.

² The National Federation of Independent Business (NFIB) founded in 1943 is the nation's largest small-business advocacy group representing 600,000 members.

5. BanxCorp's DRP schedule of minimum record-retention periods is set forth below.

Accident reports and claims	7 years
Accounts payable ledgers and schedules	7 years
Accounts receivable ledgers and schedules	7 years
Audit reports of accounts	Permanently
Bank reconciliations	1 year
Bank statements	7 years
Canceled checks (see exception below)	7 years
Canceled checks for important payments (i.e., state and federal income taxes, purchases of property, special contracts, etc.)	Permanently
Capital stock and bond records, ledgers, transfer registers, stubs showing issues, records of interest coupons, options, etc.	Permanently
Cash books	Permanently
Charts of accounts	Permanently
Contracts and leases (expired) ³	7 years
Contracts and leases still in effect	Permanently
Correspondence (routine e-mails) with customers or vendors ⁴	1 year
Correspondence (legal and important matters only)	Permanently
Deeds, mortgages and bills of sale	Permanently
Depreciation schedules	Permanently
Duplicate deposit slips	3 years

³ BanxCorp has retained all contracts with customers, which will be produced as requested.

⁴ All employees were required to routinely forward or report sensitive and important files and e-mails pertaining to customers, vendors or IT matters to BanxCorp's CEO.

Employee personnel records (after termination)	4 years
Employee benefit plan records	7 years
Employment applications	3 years
Financial statements (end-of-year, other months optional)	Permanently
General and private ledgers (and end-of-year trial balances)	Permanently
Insurance records, current accident reports, claims, policies, etc.	Permanently
Internal audit reports	3 years
Internal memos and reports (miscellaneous)	3 years
Inventories of products, materials and supplies	7 years
Invoices to customers	7 years
Invoices from vendors	7 years
Journals	Permanently
Minute books of directors and stockholders, including by-laws and charter	Permanently
Notes receivable ledger and schedules	7 years
Option records (expired)	7 years
Payroll accounting records and summaries, including payments to pensioners	7 years
Petty cash vouchers	3 years
Physical inventory tags	3 years
Property appraisals by outside appraisers	Permanently
Property records (including costs, depreciation reserves, end-of-year trial balances, depreciation schedules, blueprints, and plans)	Permanently
Purchase orders (except purchasing department copy)	1 year
Purchase orders (purchasing department copy)	7 years

Receiving sheets	1 year
Sales records	7 years
Stock and bond certificates (canceled)	7 years
State and federal income tax returns and worksheet, revenue agents' reports and other documents relating to determination of income tax liability	Permanently
Time books	7 years
Trademark, copyright and patent registrations	Permanently
Voucher register and schedule	7 years
Vouchers for payments to vendors, employees, etc. (includes allowances and reimbursement of employees, officers, etc. for travel and entertainment expenses)	7 years

6. On or about January 2007, once the litigation at issue was anticipated, Plaintiff suspended its routine document retention policy and put in place a litigation hold to preserve any documents reasonably believed to be relevant to this action.

7. I have retained and preserved my e-mail files, as well as all relevant employee e-mails and documents pertaining to customers and vendors and all relevant IT staff e-mails that were required to be forwarded or reported to me routinely, from 1998 to the present.

8. To reduce the risk of deletion, duplicate copies of my e-mails are automatically forwarded to Batsheva Mehl (professionally known as Diana Mehl), a director and officer of BanxCorp.

9. Plaintiff further created a password-protected central data repository of its electronically stored information ("ESI"), including the e-mail archives of Norbert and Batsheva Mehl, on its main network drive and file server.

10. The search methodology undertaken by BanxCorp to review and produce documents responsive to Bankrate's requests for production of documents and required by Fed.

R. Civ. P. 26(a), involve the following steps:

- a. Data Inventory and Collection: BanxCorp undertook a full inventory of its ESI and hard copy documentation including the scope, structure, format, state and volume of the data, and the media needed to be examined and collected;
- b. Analytics/Filtering: BanxCorp's ESI data is fully accessible in any number of key word searches, date filters, or full inclusions/exclusions, with actual search results varying from 0% – 99% depending on the amount of filtering desired.

11. I am not aware of any documents previously maintained by BanxCorp that may have been lost or destroyed in violation of BanxCorp's DRP.

12. I am also not aware of any relevant information or data previously maintained by BanxCorp that may have been lost or destroyed after BanxCorp put in place its litigation hold.

13. Pursuant to BanxCorp's DRP, computers or hard drives that may have become inoperable due to system corruption or obsolescence were recycled, unless they were able to be reformatted and reconfigured. Computers of terminated employees were reformatted and reconfigured (after forwarding or saving any sensitive and important files) for reuse by new employees.

14. A common limitation of an American National Standards Institute ("ANSI") based personal storage ("PST") file is that it has a maximum size limit of 1.937 GB. Therefore, if e-mails totaling more than 1.937 GB are copied into a PST file, the excess emails are lost. In earlier versions of Microsoft Outlook if the PST file grew larger than 2 GB, Outlook could no

longer open the file occasionally causing unexpected data losses. Then, beginning with Microsoft Office Outlook 2003, the PST data file format was modified to no longer have a fixed size limit (although it defaults to a maximum size of 20 GB). [See <http://www.pstfile.org>]

15. The identities of all employees, officers, and directors of BanxCorp since 2000, whose e-mail and electronic databases have been searched are as follows:

- a. Norbert Mehl (ESI searches include norbert.mehl@banx.com, and the following e-mail alias addresses: sales@banx.com, info@banx.com, billing@banx.com)⁵
- b. Batsheva Mehl (ESI searches were based on the email address diana.mehl@banx.com)

16. The identities of BanxQuote employees from 2000 to the present who had a banx.com e-mail⁶ is as follows:

- a. Abu Thomas, IT/computer programmer 5/17/00 – 7/31/09
- b. Akanimo E. Udo, back office 6/28/04 – 7/19/04
- c. Alejandro Reyes, sales and research 4/1/02 – 4/16/02
- d. Andre B. Marion, sales and research 5/10/00 – 6/7/00
- e. Andre T. Hart, sales and research 1/16/01 – 11/29/01
- f. Anna Carpio, sales and research 3/13/00 – 6/26/00
- g. Christian J Fernandez Blanco, sales and research 7/5/00 – 1/26/01
- h. Christina M. Black, back office 7/1/03 – 9/19/03

⁵ All incoming sales and business inquiries were routinely routed to Norbert Mehl who would then assign them to other employees or handle them directly as deemed appropriate. All sales employees reported to Norbert Mehl.

⁶ Former employee e-mails required to be forwarded or reported to BanxCorp's CEO were searched within Norbert Mehl's ESI.

- i. Coleen Elmahy, back office 7/24/00 – 8/7/00
- j. Danielle Bencivenga, sales and research 2/11/02 – 3/20/02
- k. Daosheng Kang, IT/computer programmer 10/1/99 – 4/28/00
- l. David T. Fields, sales and research 5/1/00 – 11/17/00
- m. Deep K. Anand, sales and IT support 4/1/00 – 8/31/00
- n. Felicia T. Harris, back office 10/10/00 – 1/26/01
- o. Feodor A. Diaz, sales and research 2/27/01 – 11/28/01
- p. Giuseppe F. Cristofaro, sales and research 6/3/02 – 10/11/02
- q. Hina Pervez, sales and research 4/20/98 – 1/19/01
- r. Jacob C. Dolman, sales and research 12/3/01 – 7/31/03
- s. Jeff Lee, sales and research 1/22/01 – 3/16/01
- t. Kwok K. Yu, IT/computer programmer 8/21/00 – 11/9/01
- u. Li Ma, sales and research 2/19/01 – 2/5/02
- v. Martina Janeckova, sales and research 11/26/01 – 5/16/03
- w. Max G. Gladstone, sales and research 3/9/00 – 3/17/00
- x. Michael M. Feliu, sales and research 9/8/98 – 2/25/00
- y. Michael S. Roth, receptionist, research, back-office 9/23/03 – 6/30/08
- z. Roy P. Adams, sales manager 6/1/00 – 7/16/04
- aa. Ruby Kim, IT/network security 11/1/00 – 3/2/01
- bb. Shawn Arthur, sales and research 2/19/01 – 11/30/01
- cc. Susan F. Yee, back office 4/3/00 – 4/26/00
- dd. Tahir Siddique, sales and research 2/2/98 – 3/31/00
- ee. Tamika T. Jackson, back office 7/28/00 – 1/23/01

ff. Tierza Roth, back office 8/3/00 – 9/11/00

gg. Xue Rui Wang, back office 10/25/99 – 1/31/00

hh. Zachary A. Fritz, sales and research 5/8/00 – 6/7/00

17. The electronic storage devices containing BanxCorp information, including any back-up discs, are located at 153 South Morris Lane, Scarsdale, New York.

18. The description of electronic storage devices containing BanxCorp information, including back-up discs maintained by BanxCorp is as follows:

- a. Dell PowerEdge SC1425 (database server)
- b. Dell PowerVault NF100 (network storage server)
- c. Dell PowerVault RD1000 (removable disk drive)
- d. PowerVault removable disk cartridges (2x 500GB)
- e. Western Digital removable disk
- f. Dell PowerEdge 4400 (local area network server)
- g. Dell PowerEdge T300 (web server)
- h. Dell Studio XPS (laptop)
- i. Gateway DX 4300 (workstation)
- j. Dell PowerEdge 1550 (inactive server)
- k. Dell PowerEdge 1300 (inactive server)
- l. Dell PowerEdge 6300 (inactive server)
- m. Dell PowerEdge 2300 (inactive server)
- n. Dell Optiplex (2 inactive workstations)
- o. Dell Dimension 3000 (4 inactive workstations)
- p. Dell Latitude D630 (inactive laptop)

q. Dell Inspiron 4150 (inactive portable backup server)

19. The total volume of all of BanxCorp's ESI is approximately 1 (one) terabyte.

20. The approximate volume of data and total volume of e-mail currently in BanxCorp's possession broken down by custodian, is as follows:

a. Norbert Mehl: 50 gigabytes.

b. Batsheva Mehl: 65 gigabytes.

c. Shared central data repository: 374 gigabytes.

21. The total amount of hard copy documentation maintained or stored by BanxCorp consists of six 3-feet wide file cabinets and approximately thirty storage boxes.

22. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct.

Dated: April 12, 2011

A handwritten signature in black ink, appearing to read 'Norbert Mehl', written over a horizontal line.

Norbert Mehl